D.B. CIVIL SPECIAL APPEAL (W) NO.685/2006

Anil Dixit
Vs.
State of Rajasthan & Anr.

Date of Order :: 26.4.2007

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri R.N. Mathur for the appellant.

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This special appeal is directed against the order of the learned Single Judge dated 13.2.2003 in S.B. Civil Writ Petition no.38/2003 dismissing the writ petition of the appellant.

The appellant along with six other petitioners had filed the writ petition for quashing the office order dated 8.6.1993 enclosed as annexure-7 to the writ petition whereby direction was issued to all the concerned headmasters Secondary, Upper Primary/Primary Schools not to accept the joining of teachers appointed for the session 1992-93 without obtaining fresh appointment order. They also sought direction upon the respondents to allow them to continue on the post of Teacher Grade-III in the schools where they were appointed.

It is to be stated here that the writ petition as regards other petitioners (being petitioner nos.1 to 6) was dismissed for non-prosecution on the statement of the counsel that he had no instructions to press the petition as regards them. As such, the writ petition was heard only on behalf of the appellant who figured as petitioner no.7.

The case of the appellant is that he was appointed as Physical Teacher Grade-III pursuant to selection and appointment order was issued on 30.3.1993. He joined the school in question, namely, Government Upper Primary School, Mohabbatpura, Dudu on 10.4.1993 and started performing his duties. On 15.5.1993, he was relieved from the school on the commencement of the summer vacation with the directin to rejoin duties on reopening of the school on 1/2.7.1993. However when he reported for duty on 1.7.1993, he was informed that in the light of the afore-mentioned direction of the District Education Officer dated 8.6.1993, his joining could not be accepted till further orders. On 15.8.1993 news item was published in the newspapers asking teachers who were acquired degrees/diplomas from universities/institutions outside the State of Rajasthan to appear for verification of their degrees/diplomas in Government Senior Secondary School, Moti Katla, Jaipur. He accordingly submitted the documents viz Diploma in Physical Education from Jeevaji University. He was also asked to submit his personal affidavit to the effect that if any irregularity is found in these qualifications, action can be taken against him. Accordingly the appellant also submitted affidavit. The case of the appellant further is that he had undergone the Course in Physical Education in the Tatia Tope Physical Training College, Shivpuri in the State of Madhya Pradesh and passed the course in the year 1990 which fact was verified to be true by the State University vide letter dated 3.11.1993. The educational qualification of the appellant was thus in order and there was no justification to restrain him from rejoining his duties.

It is relevant to mention here that as per the terms of the appointment contained in the office order dated 30.3.1993, the appointment was liable to be cancelled in the event of the certificate, degrees etc., on enquiry being found to be illegal, and the candidates were required to submit affidavit to that effect. The office order further stated that the candidates should report at the place of posting by 15.4.1993. However they would assume their duties on the reopening of the school after summer vacation, and they would not be entitled to the salary for the vacation period.

The case of the respondents is that complaints had been received regarding appointments on the basis of forged degrees/diplomas in the light of which decision was taken to issue fresh appointment orders for the sessions 1993-94 after verification of the documents, and accordingly notice was issued in the newspapers on 1.7.1993 and 3.7.1993 informing the candidates at large who had obtained 52.5% marks to appear before the concerned authority for verification of documents on 7.7.1993. As the appellant did not appear for such verification, fresh appointment order was not issued. It may be recalled that on 8.6.1993 general direction had been issued to the concerned headmasters not to accept the joining of the candidates appointed for the session 1992-93 unless they obtain fresh orders of appointment. According to the respondents as the appellant did not appear for verification of his diploma etc. on 7.7.1993 which was the date fixed for that purpose, he forfeited his right to continue on the post.

We called upon the counsel for the appellant to satisfy the Court that the appellant did appear before the concerned authority for verification of the documents on the relevant date. Counsel referred to the averments in the writ petition which run as under :-

> “It would not be out of place to mention here that at the time of joining also, petitioners were asked to show their original documents and the same were shown by all the petitioners in their respective schools before joining. The school authorities after due verification of the Original documents of the petitioners, taken the joining and since then the petitioners were continuously teaching the students. . . . .
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> **(Para 2 of the writ petition)**
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> . . . . .it may be clarified that the necessary documents were got verified who were shown to the respondents on the date, it was notified.”
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> **(Para 2 of the rejoinder)**

The statement in para 2 of the writ petition refers to the alleged verification of the documents by the school authorities – apparently at the time of his alleged joining on 10.4.1993. While the later averments are silent as to the date and the particulars of the authority before which the documents were verified.

As mentioned above, the case of the appellant is that he produced the documents for verification on 16.8.1993 in Government Senior Secondary School, Moti Katla, Jaipur but there is no record of such verification. Such appearance/verification was allegedly pursuant to the news item published in newspaper, namely, Rajasthan Patrika on 15.8.1993 enclosed as annexure 16 to the rejoinder. On a plain reading, the news item does not refer to any communique. The source of the news is official correspondent of the newspaper, and therefore

it is not possible to accept the case of the appellant that acting on such news, he appeared for verification on 16.8.1993 about which there is no record. The specific case of the respondents is that the appellant did not appear for verification on 7.7.1993 pursuant to communique to that effect published in the newspapers on 1.7.1993 and 3.7.1993 The appointment had been kept in abeyance pending verification in the wake of complaints about appointments made o the basis of forged diplomas/degrees and it was incumbent upon the appellant to appear for such verification of the documents.

Counsel referred to the letter of the Jeevaji University, Gwalior dated 3.11.1993 (supra). The document was brought on record along with rejoinder. No such case was pleaded in the writ petition. The appellant was not given a fresh appointment order as he failed to appear for verification on the appointed date nor he appears to have made any request to the concerned authority to give him another opportunity of verification of documents. In the circumstances, we do not think, any relief can be granted to him. In the above premises, we are of the view that the learned Single Judge did not commit any error in dismissing the writ petition of the appellant.

In the result, the appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-